

The Appeals Board considered the record and adopted the stipulations listed in the Administrative Law Judge's Award.

ISSUES

The decedent's surviving spouse, JoAnne Pouncil, filed a motion on March 7, 1996, notifying the Administrative Law Judge that she had remarried and requested a lump-sum payment for 100 weeks of death benefits as provided for in K.S.A. 1984 Supp. 44-510b(b).

Ms. Pouncil was awarded death benefits pursuant to K.S.A. 1984 Supp. 44-510b as a result of the death of her husband that arose out of and in the course of his employment with the respondent by a judgment entered in the Sedgwick County District Court on January 17, 1990. The judgment was in the amount of \$227 per week not to exceed \$100,000, or until the remarriage of Ms. Pouncil, or upon further operation of the law. This District Court's award was affirmed by the Kansas Court of Appeals in a decision not designated for publication dated August 31, 1990.

Ms. Pouncil remarried on December 24, 1995. She received the last payment of the \$100,000 death benefit judgment on May 31, 1996. In the September 4, 1997, Award, the Administrative Law Judge found Ms. Pouncil entitled to 100 weeks of death benefits at the rate of \$227 per week, or \$22,700, less any lump sum amounts previously paid.

From that award, respondent requested Appeals Board review of the following issue:

- (1) Whether the 100-week remarriage death benefit is limited by the \$100,000 maximum death benefit in effect on decedent's date of accident.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, considering the briefs, and hearing the arguments of the parties, the Appeals Board finds as follows:

The decedent's date of accident was April 24, 1985. Accordingly, the workers compensation law in effect on that date applies. The dispute that arises in this case is the interrelationship of subsection (b) and subsection (h) of K.S.A. 1984 Supp. 44-510b. Those two subsections provided as follows:

Upon the remarriage of a surviving legal spouse receiving compensation under this section, the benefits being paid to such spouse shall terminate, except that upon such remarriage 100 weeks of benefits at the highest rate paid to such spouse under this section shall be paid to such spouse in one lump sum. K.S.A. 1984 Supp. 44-510b(b).

Notwithstanding any other provision in this section to the contrary, the maximum amount of compensation benefits payable under this section to

any and all dependents by the employer shall not exceed a total amount of \$100,000 and when such total amount has been paid the liability of the employer for any further compensation under this section to dependents, other than minor children of the employee, shall cease except that the payment of compensation under this section to any minor child of the employee shall continue for the period of the child's minority at the weekly rate in effect when the employer's liability is otherwise terminated under this subsection and shall not be subject to termination under this subsection until such child becomes 18 years of age. K.S.A. 1984 Supp. 44-510b(h).

K.S.A. 44-510b(b) was amended by the 1987 Legislature and now provides:

Upon the remarriage of a surviving legal spouse receiving compensation under this section, the benefits being paid to such spouse shall terminate, except that upon such remarriage 100 weeks of benefits at the highest rate paid to such spouse under this section shall be paid to such spouse in one lump sum, *except that such lump-sum payment shall be subject to the maximum amount of compensation payable under this section as prescribed by subsection (h).* (Emphasis added.)

The Administrative Law Judge found that when the 1987 Legislature added the above language to K.S.A. 44-510b(b), it clarified that before the amendment, the 100-week remarriage death benefit was not limited to the \$100,000 maximum contained in K.S.A. 1984 Supp. 44-510b(h). Accordingly, the Administrative Law Judge awarded claimant a lump-sum remarriage death benefit of 100 weeks at \$227 per week, or \$22,700, in excess of the \$100,000 she had already received.

Respondent contends the remarriage death benefit was limited to the \$100,000 maximum contained in K.S.A. 1984 Supp. 44-510b(h). Respondent argues the plain and unambiguous language in subsection (h) limited death benefits to a surviving spouse to the \$100,000 maximum including the 100-week remarriage benefit. Furthermore, the respondent asserts the only exception to the \$100,000 maximum death benefit is the specific exception in subsection (h) for payments to dependent minor children. The respondent argues, that if the Legislature had intended for the 100-week remarriage death benefit to be not limited to \$100,000, the Legislature would have made a specific exception for the remarriage benefit payment along with the minor children exception in subsection (h). Additionally, the respondent contends the 1987 amendment to K.S.A. 44-510b(b) was merely a codification of the law as it existed before the 1987 amendment. The respondent further asserts that the purpose of the lump sum remarriage death benefit is to lessen the disincentive for the surviving spouse to remarry. Therefore, the respondent argues, if the remarriage death benefit is not limited to the maximum death benefit, then the surviving spouse has an incentive not to remarry until the \$100,000 maximum death benefit is paid.

On the other hand, the surviving spouse contends the Administrative Law Judge was correct. She argues before the 1987 amendment to K.S.A. 44-510b(b), the maximum death benefit amount contained in subsection (h) did not apply to the 100-week remarriage death benefit. Claimant argues the Administrative Law Judge was correct in his analysis that the 1987 amendment to K.S.A. 44-510b(b) indicated a clear intent on the part of the Legislature to change the law as it existed prior to the amendment. In support, the surviving spouse cites the case of Hughes v. Inland Container Corp., 247 Kan. 407, 799 P.2d 1011 (1990) that held it is presumed that when the Legislature revises an existing law it intended to change the law as it existed before the amendment. Furthermore, the surviving spouse finds the Administrative Law Judge's award is supported in the case of Lackey v. D & M Trucking, 9 Kan. App. 2d 679, 687 P.2d 23 (1984), by interpreting the holding in that case as standing for the principle that remarriage death benefits should be treated distinctly and separately from all other death benefits, and the 100-week lump sum remarriage death benefit should not be subject to the \$100,000 maximum contained in K.S.A. 44-510b(h).

The Appeals Board agrees the purpose of the lump sum remarriage death benefit payment is to lessen the disincentive for surviving spouses to remarry were the death benefits terminated immediately upon remarriage. See Lackey, 9 Kan. App. 2d at 682. However, the Appeals Board concludes the Legislature did not intend for a surviving spouse that remarries to receive more in death benefits than a surviving spouse that chooses not to remarry. The Appeals Board finds the \$100,000 maximum death benefit limit in K.S.A. 1984 Supp. 44-510b(h) applies to the 100-week remarriage death benefit contained in K.S.A. 1984 Supp. 44-510b(b). The purpose of the Legislature in amending K.S.A. 44-510b(b) in 1987 was to either codify or clarify the existing law.

The Appeals Board also finds the surviving spouse misinterpreted the holding in the Lackey case. The court in Lackey only addressed the issue of the maximum weekly benefit provision in K.S.A. 44-510b(a). It did not address the total maximum benefit provision contained in K.S.A. 44-510b(h). K.S.A. 44-510b(a) states: ". . . in no event shall such *weekly benefits exceed*, nor be less than, the maximum and minimum weekly benefits provided in K.S.A. 44-510c" (Emphasis added.) The court held the remarriage death benefit was a lump sum award and, therefore, did not affect the weekly maximum benefit limit of K.S.A. 44-510b(a). Accordingly, K.S.A. 44-510b(a) was not violated by reapportioning the surviving spouse weekly benefit to the minor dependent children.

The Appeals Board concludes the surviving spouse, JoAnne Pouncil, has been fully paid the \$100,000 amount of death benefits as limited by K.S.A. 1984 Supp. 44-510b(h). Therefore, Ms. Pouncil is not entitled to the remarriage death benefit provided for in K.S.A. 1984 Supp. 44-510b(b) because any such payment would exceed the maximum statutory limit of \$100,000.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the September 4, 1997, Award entered by Administrative Law Judge John D. Clark should be, and is hereby, reversed and the surviving spouse, JoAnne Pouncil, is denied a 100-week remarriage death benefit because she has been paid the \$100,000 maximum benefit specified in K.S.A. 1984 Supp. 44-510b(h).

IT IS SO ORDERED.

Dated this ____ day of February 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Joni J. Franklin, Wichita, KS
 Kim R. Martens, Wichita, KS
 Kendall R. Cunningham, Wichita, KS
 John D. Clark, Administrative Law Judge
 Philip S. Harness, Director